

Union Calendar No. 512

112TH CONGRESS
2^D SESSION

H. R. 3283

[Report No. 112-477, Part I]

To amend the Commodity Exchange Act and the Securities Exchange Act of 1934 to provide an exemption for certain swaps and security-based swaps involving non-U.S. persons, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 31, 2011

Mr. HIMES (for himself and Mr. GARRETT) introduced the following bill; which was referred to the Committee on Financial Services, and in addition to the Committee on Agriculture, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

MAY 11, 2012

Reported from the Committee on Financial Services with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

MAY 11, 2012

Referral to the Committee on Agriculture extended for a period ending not later than May 30, 2012

MAY 30, 2012

Referral to the Committee on Agriculture extended for a period ending not later than July 16, 2012

JULY 16, 2012

Referral to the Committee on Agriculture extended for a period ending not later than September 21, 2012

SEPTEMBER 21, 2012

Referral to the Committee on Agriculture extended for a period ending not later than November 30, 2012

NOVEMBER 30, 2012

Referral to the Committee on Agriculture extended for a period ending not later than December 14, 2012

DECEMBER 14, 2012

Additional sponsors: Ms. MOORE, Mrs. McCARTHY of New York, Mr. DOLD, Mr. ROYCE, Mr. SCHWEIKERT, Ms. HAYWORTH, Mr. HINOJOSA, Mr. CLAY, Ms. SEWELL, Mr. DAVID SCOTT of Georgia, Mr. MEEKS, Mr. CARNEY, Mr. BACA, and Mr. KINGSTON

DECEMBER 14, 2012

The Committee on Agriculture discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

[For text of introduced bill, see copy of bill as introduced on October 31, 2011]

A BILL

To amend the Commodity Exchange Act and the Securities Exchange Act of 1934 to provide an exemption for certain swaps and security-based swaps involving non-U.S. persons, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “Swap Jurisdiction Cer-*
 5 *tainty Act”.*

6 **SEC. 2. COMMODITY EXCHANGE ACT.**

7 *Section 4s(a) of the Commodity Exchange Act (7*
 8 *U.S.C. 6s(a)) is amended by adding at the end the fol-*
 9 *lowing:*

10 *“(3) EXTRA-TERRITORIAL SWAP TRANSACTION*
 11 *APPLICATION OF TITLE VII.—*

12 *“(A) IN GENERAL.—A swap entered into be-*
 13 *tween—*

14 *“(i) a swap dealer that is registered*
 15 *with the Commission who is either—*

16 *“(I) a U.S. person, or*

17 *“(II) a person that has a parent*
 18 *company that is a U.S. person, and*

19 *“(ii) a person who is—*

20 *“(I) a U.S. or non-U.S. sub-*
 21 *subsidiary, branch, or affiliate of such*
 22 *swap dealer, or*

23 *“(II) any other non-U.S. person*
 24 *that is not registered as a swap dealer*
 25 *with the Commission,*

1 shall not be subject to the provisions of title VII
2 of the Dodd-Frank Wall Street Reform and Con-
3 sumer Protection Act, and of amendments added
4 by such title, so long as each swap dealer de-
5 scribed under clause (i) reports such swap to a
6 swap data repository registered with the Com-
7 mission.

8 “(B) SWAPS ENTERED INTO BY REGISTERED
9 NON-U.S. PERSONS.—

10 “(i) IN GENERAL.—A non-U.S. person
11 that registers as a swap dealer with the
12 Commission shall only be subject to the re-
13 quirements of title VII of the Dodd-Frank
14 Wall Street Reform and Consumer Protec-
15 tion Act, and of amendments added by such
16 title, with respect to swaps that such person
17 enters into with a U.S. person who is not
18 a U.S. subsidiary, branch, or affiliate of
19 such non-U.S. person.

20 “(ii) CAPITAL REQUIREMENTS.—A
21 non-U.S. person that registers as a swap
22 dealer with the Commission shall be per-
23 mitted by the Commission to comply with
24 the capital requirements under subsection
25 (e) by complying with comparable require-

1 *ments established by the appropriate gov-*
2 *ernmental authorities in the home country*
3 *of the non-U.S. person, so long as such*
4 *home country is a signatory to the Basel*
5 *Accords.*

6 “(C) *NON-U.S. PERSON.—For purposes of*
7 *this paragraph, the term ‘non-U.S. person’ in-*
8 *cludes—*

9 *“(i) any person that is not a U.S. per-*
10 *son;*

11 *“(ii) any discretionary account or*
12 *similar account (other than an estate or*
13 *trust) held for the benefit or account of a*
14 *non-U.S. person by a dealer or other profes-*
15 *sional fiduciary organized, incorporated, or*
16 *(if an individual) resident in the United*
17 *States;*

18 *“(iii) any agency or branch of a U.S.*
19 *person located outside the United States*
20 *if—*

21 *“(I) the agency or branch operates*
22 *for valid business reasons; and*

23 *“(II) the agency or branch is en-*
24 *gaged in the business of insurance or*
25 *banking and is subject to substantive*

1 *insurance or banking regulation, re-*
2 *spectively, in the jurisdiction where it*
3 *is located;*

4 “(iv) *any trust of which any profes-*
5 *sional fiduciary acting as trustee is a U.S.*
6 *person, if—*

7 “(I) *a trustee who is a non-U.S.*
8 *person has sole or shared investment*
9 *discretion with respect to the trust as-*
10 *sets; and*

11 “(II) *no beneficiary of the trust*
12 *(and no settlor if the trust is revocable)*
13 *is a U.S. person;*

14 “(v) *an employee benefit plan estab-*
15 *lished and administered in accordance with*
16 *the law, customary practices, and docu-*
17 *mentation of a country other than the*
18 *United States; and*

19 “(vi) *the International Monetary*
20 *Fund, the International Bank for Recon-*
21 *struction and Development, the Inter-Amer-*
22 *ican Development Bank, the Asian Develop-*
23 *ment Bank, the African Development Bank,*
24 *the United Nations, a central bank or its*
25 *functional equivalent which is located in a*

1 *non-U.S. jurisdiction and that is a signa-*
2 *tory to the Basel Accords, and their agen-*
3 *cies, affiliates and pension plans, and any*
4 *other similar international organizations,*
5 *their agencies, affiliates and pension plans.*

6 “(D) U.S. PERSON.—*For purposes of this*
7 *paragraph, the term ‘U.S. person’ includes—*

8 “(i) *any natural person resident in the*
9 *United States;*

10 “(ii) *any partnership or corporation*
11 *organized or incorporated under the laws of*
12 *the United States;*

13 “(iii) *any estate of which any executor*
14 *or administrator is a U.S. person;*

15 “(iv) *any trust of which any trustee is*
16 *a U.S. person;*

17 “(v) *any agency or branch of a foreign*
18 *entity located in the United States;*

19 “(vi) *any non-discretionary account or*
20 *similar account (other than an estate or*
21 *trust) held by a dealer or other fiduciary for*
22 *the benefit or account of a United States*
23 *person;*

24 “(vii) *any discretionary account or*
25 *similar account (other than an estate or*

1 *trust) held by a dealer or other fiduciary or-*
2 *ganized, incorporated, or (if an individual)*
3 *resident in the United States; and*

4 “*(viii) any partnership or corpora-*
5 *tion—*

6 “*(I) organized or incorporated*
7 *under the laws of any foreign jurisdic-*
8 *tion; and*

9 “*(II) formed by a U.S. person*
10 *principally for the purpose of investing*
11 *in securities not registered under the*
12 *Securities Act of 1933, unless it is or-*
13 *ganized or incorporated, and owned,*
14 *by accredited investors (as such term is*
15 *defined under section 230.501 of title*
16 *17, Code of Federal Regulations) that*
17 *are not natural persons, estates, or*
18 *trusts.*

19 “*(E) ANTI-EVASION.—Notwithstanding any*
20 *other provision of this paragraph, each registered*
21 *swap dealer shall be subject to the provision*
22 *under section 2(i)(2).”.*

23 **SEC. 3. SECURITIES EXCHANGE ACT OF 1934.**

24 *Section 15F(a) of the Securities Exchange Act of 1934*
25 *(78o–10(a)) is amended by adding at the end the following:*

1 “(3) *EXTRA-TERRITORIAL SWAP TRANSACTION*
2 *APPLICATION OF TITLE VII.—*

3 “(A) *IN GENERAL.—A security-based swap*
4 *entered into between—*

5 “(i) *a security-based swap dealer that*
6 *is registered with the Commission who is ei-*
7 *ther—*

8 “(I) *a U.S. person, or*

9 “(II) *a person that has a parent*
10 *company that is a U.S. person, and*

11 “(ii) *a person who is a U.S. or non-*
12 *U.S. subsidiary, branch, affiliate, or parent*
13 *company of such security-based swap deal-*
14 *er,*

15 *shall not be subject to the provisions of title VII*
16 *of the Dodd-Frank Wall Street Reform and Con-*
17 *sumer Protection Act, and of amendments added*
18 *by such title, so long as each security-based swap*
19 *dealer described under clause (i) reports such se-*
20 *curity-based swap to a security-based swap data*
21 *repository registered with the Commission.*

22 “(B) *SECURITY-BASED SWAPS ENTERED*
23 *INTO BY REGISTERED NON-U.S. PERSONS.—*

24 “(i) *IN GENERAL.—A non-U.S. person*
25 *that registers as a security-based swap deal-*

1 *er with the Commission shall only be subject*
2 *to the requirements of title VII of the Dodd-*
3 *Frank Wall Street Reform and Consumer*
4 *Protection Act, and of amendments added*
5 *by such title, with respect to security-based*
6 *swaps that such person enters into with a*
7 *U.S. person who is not a U.S. subsidiary,*
8 *branch, or affiliate of such non-U.S. person.*

9 *“(ii) CAPITAL REQUIREMENTS.—A*
10 *non-U.S. person that registers as a security-*
11 *based swap dealer with the Commission*
12 *shall be permitted by the Commission to*
13 *comply with the capital requirements under*
14 *subsection (e) by complying with com-*
15 *parable requirements established by the ap-*
16 *propriate governmental authorities in the*
17 *home country of the non-U.S. person, so*
18 *long as such home country is a signatory to*
19 *the Basel Accords.*

20 *“(C) NON-U.S. PERSON.—For purposes of*
21 *this paragraph, the term ‘non-U.S. person’ in-*
22 *cludes—*

23 *“(i) any person that is not a U.S. per-*
24 *son;*

1 “(ii) any discretionary account or
2 similar account (other than an estate or
3 trust) held for the benefit or account of a
4 non-U.S. person by a dealer or other profes-
5 sional fiduciary organized, incorporated, or
6 (if an individual) resident in the United
7 States;

8 “(iii) any agency or branch of a U.S.
9 person located outside the United States
10 if—

11 “(I) the agency or branch operates
12 for valid business reasons; and

13 “(II) the agency or branch is en-
14 gaged in the business of insurance or
15 banking and is subject to substantive
16 insurance or banking regulation, re-
17 spectively, in the jurisdiction where it
18 is located;

19 “(iv) any trust of which any profes-
20 sional fiduciary acting as trustee is a U.S.
21 person, if—

22 “(I) a trustee who is a non-U.S.
23 person has sole or shared investment
24 discretion with respect to the trust as-
25 sets; and

1 “(II) *no beneficiary of the trust*
2 *(and no settlor if the trust is revocable)*
3 *is a U.S. person;*

4 “(v) *an employee benefit plan estab-*
5 *lished and administered in accordance with*
6 *the law, customary practices, and docu-*
7 *mentation of a country other than the*
8 *United States; and*

9 “(vi) *the International Monetary*
10 *Fund, the International Bank for Recon-*
11 *struction and Development, the Inter-Amer-*
12 *ican Development Bank, the Asian Develop-*
13 *ment Bank, the African Development Bank,*
14 *the United Nations, a central bank or its*
15 *functional equivalent which is located in a*
16 *non-U.S. jurisdiction and that is a signa-*
17 *tory to the Basel Accords, and their agen-*
18 *cies, affiliates and pension plans, and any*
19 *other similar international organizations,*
20 *their agencies, affiliates and pension plans.*

21 “(D) *U.S. PERSON.—For purposes of this*
22 *paragraph, the term ‘U.S. person’ includes—*

23 “(i) *any natural person resident in the*
24 *United States;*

1 “(ii) any partnership or corporation
2 organized or incorporated under the laws of
3 the United States;

4 “(iii) any estate of which any executor
5 or administrator is a U.S. person;

6 “(iv) any trust of which any trustee is
7 a U.S. person;

8 “(v) any agency or branch of a foreign
9 entity located in the United States;

10 “(vi) any non-discretionary account or
11 similar account (other than an estate or
12 trust) held by a dealer or other fiduciary for
13 the benefit or account of a United States
14 person;

15 “(vii) any discretionary account or
16 similar account (other than an estate or
17 trust) held by a dealer or other fiduciary or-
18 ganized, incorporated, or (if an individual)
19 resident in the United States; and

20 “(viii) any partnership or corpora-
21 tion—

22 “(I) organized or incorporated
23 under the laws of any foreign jurisdic-
24 tion; and

1 “(II) formed by a U.S. person
2 principally for the purpose of investing
3 in securities not registered under the
4 Securities Act of 1933, unless it is or-
5 ganized or incorporated, and owned,
6 by accredited investors (as such term is
7 defined under section 230.501 of title
8 17, Code of Federal Regulations) that
9 are not natural persons, estates, or
10 trusts.

11 “(E) ANTI-EVASION.—Notwithstanding any
12 other provision of this paragraph, a registered
13 security-based swap dealer shall not conduct any
14 activities that are designed to evade any provi-
15 sion of this Act that was enacted by the Wall
16 Street Transparency and Accountability Act of
17 2010.

18 “(F) PRESERVATION OF AUTHORITY.—Noth-
19 ing in this paragraph shall—

20 “(i) exempt a transaction described in
21 this paragraph from section 23A or 23B of
22 the Federal Reserve Act, or implementing
23 regulations thereunder; or

24 “(ii) affect the authorities of the pru-
25 dential regulators over the institutions de-

1 *scribed under subparagraphs (A) through*
2 *(E) of section 1a(39) of the Commodity Ex-*
3 *change Act (7 U.S.C. 1a(39)) as those au-*
4 *thorities are established in law, other than*
5 *under title VII of the Dodd-Frank Wall*
6 *Street Reform and Consumer Protection Act*
7 *and amendments made by such title.”.*

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112TH CONGRESS
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H. R. 3283

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A BILL

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